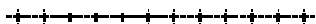


House Select Committee on Homeowners Associations Summary of Committee Proceedings and Proposed Findings

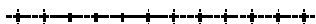


Committee Proceedings

The House Select Committee on Homeowners Associations was established by the Speaker of the House of Representative pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representative of the 2009 General Assembly. The Committee consists of the following seven members: Rep. Jennifer Weiss (Co-Chair), Rep. Bill McGee (Co-Chair), Rep. George Cleveland, Rep. Beverly Earle, Rep. Chris Heagarty, Rep. Julia Howard, and Rep. Michael Wray.

The charge of the Committee is to study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, and shall submit a final report to the members of the House of Representatives on or before February 1, 2011.

The Committee met five times after the adjournment of the 2009 Regular Session of the 2009 General Assembly on August 11, 2009. The Committee also held a public hearing on February 2, 2010.



January 13, 2010 Meeting

At the initial meeting of the Committee staff read the Charge to the Committee and gave an overview of the current law regarding the North Carolina's Condominium Act and Planned Community Act. Recent changes to these Acts were also discussed. Legislation enacted by the General Assembly in 2005 were geared toward providing additional safeguards and protections for homeowners.

These changes included the following:

- Limiting the use of foreclosure by power of sale if the debt securing the lien on a homeowner's lot consisted solely of fines imposed by the homeowners association (HOA);
- Limiting the payment of attorneys' fees and court when there is an overdue assessment on a homeowner's property;
- Expanding the duties of the HOA to make available to the homeowners the HOA's books and records;
- Restricting the ability of covenants to regulate the display of a U.S. or North Carolina flags and the display of political signs.

In 2009, the following legislation was enacted:

- Added language to insure that homeowners receive notice of a filing of the claim of lien prior to institution of foreclosure proceedings;
- Clarified that any new restrictive covenants, created on or after December 1, 2009, would be invalidated if these covenants would prohibit the installation of solar collector devices in planned communities and condominium communities. Legislation limiting the regulation of solar collectors was enacted in 2007.

The Committee then discussed future meeting dates.

February 2, 2010 Meeting

The Committee heard from approximately 35 speakers. The comments ranged from providing more disclosure for homeowners, alleviating problems with abuse of power by board members when enforcing restrictive covenants, limiting foreclosure on delinquent assessments, and maintaining current foreclosure law.

February 16, 2010 Meeting

The Committee heard from Bob Leker, Renewable Program Manager in the State Energy Office of the North Carolina Department of Commerce. Mr. Leker discussed issues related to the limitations on regulating solar collectors, specifically as it relates to limiting solar collectors on the basis of visibility.

Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts, presented comments regarding the need for legislation to prevent defects in title, questionable procedures, and abuses and overcharges in HOA lien foreclosures. He emphasized that there are protections for homeowners facing foreclosure of deeds of trusts, but no parallel protections for HOA foreclosures.

Phil Telfer, Special Deputy Attorney General, with the Consumer Protection Division of the North Carolina Department of Justice discussed the HOA complaints handled by the Division. He indicated that there were approximately 38 written complaints in 2009 and that the Division gets approximately 100 calls per year. Most of these calls relate to services offered by HOAs, fees charged, billing practices, and recordkeeping and foreclosures by HOAs. Mr. Telfer indicated that the most benefit that the Division can offer is education prior to purchase of a lot.

March 4, 2010 Meeting

The Committee heard remarks from Mariam Baer, Legal Counsel and Assistant Director, of the Legal Services Division within the North Carolina Real Estate Commission. Ms. Baer, commented on citizen inquiries and complaints to the Commission regarding HOAs, the Commission's jurisdiction in responding to complaints, and the real estate broker's duties with regard to disclosing to consumers the existence of HOAs and restrictive covenants.

Rob Baer, President of the North Carolina Chapter of the Community Associations Institute (CAI) spoke on the role of the CAI to provide the latest information on community association management and governance to volunteer HOA boards. Mr. Baer indicated that the CAI advocated for legislative and regulatory policies that support responsible governance and effective management.

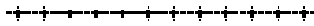
Al, Ripley, Director of the Consumer Action Network at the North Carolina Justice Center, discussed certain minimum protections for homeowners that the Committee should consider.

March 31, 2010 Meeting

The Committee was given an overview of the Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act by Carl, H. Lisman, an attorney and Commissioner with the National Conference of Commissions on Uniform State Laws. Mr. Lisman discussed the Acts and how they compare to North Carolina's Planned Community and Condominium Acts.

Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce, was asked to speak again to the Committee regarding concerns about the visibility restrictions on the installation of solar panels. Mr. Leker discussed possible solutions and gave examples of how other states have addressed this issue.

Proposed Committee Findings



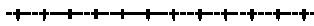
Finding 1 ... Demographics.

Issues associated with homeowners associations can reasonably be expected to increase rather than decrease as the number of associations operating in the State grows along with population.

With regard to current statistics, there is no mandatory registry of homeowners associations and as such an exhaustive list of associations does not exist. According to Homeowners Associations of North Carolina, however, there are over 17,326 homeowner associations in North Carolina collectively representing over 2,025,000 households or 53% of the owner occupied households in the State.¹

In recent years, North Carolina's population has grown rapidly. Estimates prepared by the U.S. Census Bureau show that between 2000 and 2005, the State had the ninth-highest growth rate (7.88 percent) among the fifty states and the District of Columbia, reaching a population of 8,683,242. Projections of population growth between 2000 and 2030 prepared by the State demographer indicate that the State total population is expected to reach about 12 million by 2030. The U.S. Census Bureau has projected that North Carolina will become the seventh most populous state by 2030, with more than 12.2 million residents. This move up from the current eleventh place is expected to happen as the State passes New Jersey, Michigan, Ohio, and Georgia in total population.²

As robust growth in the State's population continues to occur over the next two decades corresponding growth in housing construction and the number of homeowners associations is likely to dovetail.



Finding 2 ... Bad Accountability.

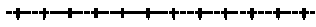
The Committee finds that there is a need to provide homeowners with better recourse when seeking to challenge actions by the Board of Directors.

The most common complaint expressed by homeowners both at the public hearing and by correspondence is the lack of an easily accessible and affordable method for homeowners to challenge the actions of the Board of Directors. The Committee received numerous reports from individuals describing flagrant violations of the statute and/or bylaws of the association. These complaints dealt with issues such as failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants. However, the only recourse currently available to homeowners in most cases is to commence a civil action. This option is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense.

Several homeowners suggested that there should be a less costly method of enforcing the statute and resolving disputes with the Board. These suggestions included designating a State agency to enforce the statute, or authorizing mandatory mediation or other methods of alternative dispute resolution.

¹See <http://www.hoa-nc.com/About.aspx>

²See <http://www.ncmuseumofhistory.org/collateral/articles/S06.recent.population.change.pdf>. Data from article entitled "Recent Population Change in North Carolina" by Dr. Alfred W. Stuart from *Tar Heel Junior Historian* 45:2 (spring 2006).

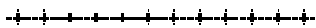


Finding 3 ... Disclosure.

The Committee finds that there is a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property

Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding by the homeowners at the time they purchased their homes of the existence of restrictive covenants applicable to real property located in planned communities.

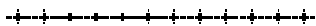
It does not appear that present disclosure practices are adequate in notifying prospective purchasers of the nature of the restrictions upon the real property. Sellers of homes in planned communities are in the best position to provide this information to prospective purchasers. G.S. 47E-4 requires that sellers of residential real property furnish to purchasers a residential property disclosure statement, and requires the Real Estate Commission to develop a standard disclosure statement that must include, among other things, "the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property". The current disclosure statement requires disclosure of "violations of zoning ordinances, restrictive covenants or other land-use restrictions or building codes" but does not require sellers to disclose the existence of restrictive covenants if there are no violations. Sellers should be required to disclose the existence of any restrictive covenants affecting the use of the real property, and to furnish a copy of all such restrictive covenants to prospective purchasers. The most efficient way to accomplish the needed disclosure appears to be for the Real Estate Commission to amend the disclosure form to include these requirements. Such amendment would be within the scope of the present statutory authority granted to the Commission pursuant to G.S. 47E-4. The Committee is informed that the Real Estate Commission is prepared to initiate a rulemaking proceeding for the purpose of implementing revisions to the disclosure statement as recommended by the Committee.



Finding 4 ... Declarant Transfer Issues.

The Committee finds that the law should be clarified with regard to the obligations of the declarant.

Unlike the Condominium Act, the Planned Community Act does not limit the time period during which the declarant (developer) may maintain control of the association. Several homeowners related cases of abuses by the declarant including refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems.

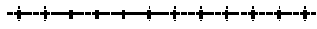


Finding 5 ... Consumer Protection.

The Committee finds that there is a need for additional consumer protections to better protect homeowners from abusive homeowner association practices.

Several homeowners complained that the law gives homeowners few rights to challenge the actions of the association's Board. The board can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of the association, cause additional improvements to be made as part of the common elements, and impose fees and fines. Homeowner's have complained that these and other actions are often taken without giving notice or an opportunity to vote on such issues to homeowners.

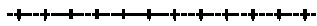
In addition, there have been many complaints about unreasonable actions by the Board, such as arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, and abuse of the foreclosure process.



Finding 6 ... Foreclosure Issues.

The Committee finds that although the Planned Community Act authorizes the use of foreclosure proceedings to satisfy homeowner association liens, the foreclosure statute was never intended for this purpose and there are a number of incongruities between the statutes. This issue was raised by the legal counsel to the Administrative Office of the Courts.

In addition, the law authorizes "power of sale foreclosure" to recover unpaid assessments and "judicial foreclosure" to recover unpaid fines and fees. Several individuals suggested that the statute should be amended to prohibit or limit the use of foreclosure in all or some cases.



Finding 7 ... Clarification of the Solar Access Law.

The Committee heard from the State Energy Office and a few homeowners that there is some confusion with regard to the law that invalidates any new restrictive covenants which prohibit the installation of solar collector devices. The law contains an exception if the solar device is visible from a roof slope or façade or if it faces a public access way. Some homeowner associations have apparently used the exception to exclude solar devices altogether.

It was suggested that the law be clarified to limit or remove the visibility exception, as has been done in a number of other states.